

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

DUSTIN BLAKE VIA,)	
)	
Petitioner,)	
)	
v.)	No. 1:22-cv-01028-JDB-jay
)	Re: 1:19-cr-10084-JDB-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL
AND
DIRECTING CLERK TO TERMINATE MOTIONS AND CLOSE CASE

On February 16, 2022, Petitioner, Dustin Blake Via, filed a pro se motion to vacate, set aside, or correct his sentence (the Petition”) pursuant to 28 U.S.C. § 2255. (Docket Entry (“D.E.”) 1.) Two days later, he submitted a motion to correct clerical errors in his sentence. (D.E. 4.) On March 21, 2022, the inmate filed a motion to withdraw the Petition. (D.E. 5.) He stated in the motion that he “wish[es] to retract . . . my recently filed 2255 motion. I believe that I received a fair sentence and have no interest in pursuing relief.” (*Id.* at PageID 23.) The Court construes the document as a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a).

Under the rule, if the defendant has not filed an answer or motion for summary judgment in response to the complaint, the plaintiff may dismiss the complaint, without prejudice and without seeking a Court order, by filing a notice of dismissal. Fed. R. Civ. P. 41(a)(1). “[P]roperly filed notices of voluntary dismissal are self-effectuating[.]” *White v. United States*, No. 2:12-CR-98-JRG-20, 2017 WL 2219018, at *2 (E.D. Tenn. May 17, 2017). In the present case, the Government has not responded to the Petition. Therefore, as the notice of voluntary dismissal is valid and self-effectuating, the Court concludes that the Petition has been voluntarily dismissed

without prejudice. *See* Fed. R. Civ. P. 41(a)(1)(B) (“Unless the notice . . . states otherwise, the dismissal is without prejudice.”).

The Clerk is DIRECTED to terminate the motions at D.E. 4 and 5 and close the case.

IT IS SO ORDERED this 24th day of March 2022.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE